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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET CORPORATION,
Petitioner,

- versus

C.T.A. CASE NO. 5268

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 04 1997

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DECISION

This petition is seeking for the issuance of a tax credit certificate in the amounts of P11,050,971.15 and P12,507,718.90 or an aggregate amount of P23,558,690.05, representing alleged excess unutilized input tax credits for the quarters ending September 30, 1993 and December 31, 1993.

Petitioner is a domestic corporation primarily engaged in the mining business which includes the exploration, development and operation of mining properties for purposes of commercial production, and the marketing of marketable mining products produced by it. It exports 100% of its major product which is gold. As such, it is registered with the Bureau of Internal Revenue (BIR) as a value added tax (VAT) taxpayer in accordance with Section 107 of the Tax Code with VAT Registration No. 31-9-000027 (Exhibit "A").

For the quarter ending September 30, 1993, petitioner filed its VAT return and amended VAT return with the BIR on October 29, 1993 reflecting a total VAT output tax of P9,741,801.01 and a total VAT input tax of P20,833,430.62 resulting in excess input taxes in the amount of P11,091,629.61, computed as follows:

	Amount	VAT output tax
Gross taxable goods/services	P97,418,010.10	P 9,741,801.01
Less: Details of purchases		
a) Domestic purchases of goods/services	17,231,308.62	
b) Importation of goods	3,602,122.00	20,833,430.62
Excess input taxes		P11,091,629.61

Similarly, for the quarter ending December 31, 1993 petitioner filed with the BIR its VAT return and amended VAT return on May 12, 1994 reflecting a total VAT output tax of P12,133,400.10 and a total VAT input tax of P24,716,171.31 resulting in an excess input tax of P12,582,771.21 computed as follows:

	Amount	VAT output tax
Gross taxable goods/services	P121,334,001.00	P12,133,400.10
Less: Details of purchases		
a) Domestic purchases of goods/services	P 21,080,604.31	
b) Importation of goods	3,635,567.00	24,716,171.31
Excess input taxes		P12,582,771.21

Pursuant to Revenue Audit Memorandum Order No. 2-93, petitioner filed with the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the

Department of Finance, separate applications for tax credit of its excess input tax payments for the quarter ending September 30, 1993 on December 14, 1994 (Exhibit "F") and quarter ending December 31, 1993 on January 18, 1995 (Exhibit "G").

Respondent did not act on these applications for tax credit, hence petitioner was compelled to file a petition for review with this Court on July 18, 1995.

On March 12, 1996, petitioner filed a Motion to Declare Respondent in Default which this Court granted through a Resolution promulgated on May 9, 1996 (CTA Records, p. 35), declaring the respondent in default for having failed to file her answer from receipt of summons on July 24, 1995.

During the pendency of this case in Court, respondent issued Tax Credit Certificate SN 007927, dated October 15, 1996, in the amount of P8,671,512.66 (CTA Records, p. 57) in favor of the petitioner representing a portion of the total amount claimed as tax credit by the petitioner. Hence, a Manifestation was filed by petitioner on November 28, 1996 (CTA Records, pp. 55-56) indicating to the Court that it shall pursue the instant case for appropriate litigation of the balance of its claim amounting to P14,941,177.39.

The sole factual issue presented before Us is whether or not petitioner is entitled to the tax credit of the remaining amount of P14,941,177.39 representing alleged excess unutilized input tax credits for the quarters ending September 30, 1993 and December 31, 1993.

We rule in favor of the petitioner on two grounds.

First, petitioner has submitted substantial evidence to prove its claim for the tax credit, such as:

1) Petitioner's VAT registration certificate (Exhibit "A");

2) Petitioner's value-added tax returns and amended value-added tax returns for the quarters ending September 30, 1993, December 31, 1993 and March 31, 1994 (Exhibits "B", "C", "D", "E", "H" and "I");

3) Written claims and applications for tax credit/refund of value-added tax paid, filed by the petitioner for the quarters ending September 30, 1993 and December 31, 1993 (Exhibits "F", "F-1", "G" and "G-1");

4) Certification issued by SGV & Company on October 4, 1996 (Exhibit "J");

5) Summary of input taxes paid by petitioner for the quarters ending September 30, 1993 and December 31, 1993 (Exhibits "K", "K-1" to "K-35", "L", "L-1" to "L-43");

6) Supplier's invoices and official receipts for the quarters ending September 30, 1993 and December 31, 1993 (Exhibits "K-1-1" to "K-35-109", and "L-1-1" to "L-43-115);

7) Summary of foreign currency inward remittances for the quarters ending September 30, 1993 and December 31, 1993 (Exhibits "M-1" and "N-1"); and

8) Bank credit advices issued to petitioner for the quarters ending September 30, 1993 and December 31, 1993 (Exhibits "M-1-1" to "M-1-51" and "N-1-1" to "N-1-37).

Second, while the case was pending hearing before this Court, respondent had acted favorably upon petitioner's claim evidenced by Tax Credit Certificate SN 007927 in the amount of P8,671,512.66 (CTA Records, p. 57) representing a portion of the total amount claimed as tax credit by the petitioner for the fourth quarter of 1993.

Pursuant to CTA Circular No. 1-95, petitioner also presented as evidence the certification prepared by an independent Certified Public Accountant (SGV and Company), which verified the accuracy of the "Summary of Input Taxes" prepared by the Company for the period covered in the present claim for refund. Furthermore, this independent CPA checked the documents related to the input taxes covered in the claim and ascertained that:

a. The details agree with the details per "Summary of Input Taxes";

b. Domestic purchases of goods and services are supported by invoices and/or official receipts;

c. Importations are supported by Import Entry Declaration and/or Bureau of Customs official receipts;

d. The relevant document on file is the original copy; and

e. The input taxes claimed were correctly computed.

In addition, the following findings and observations of SGV and Company were presented based on the abovementioned procedures they performed:

A.

Findings	Third Quarter	Fourth Quarter	Total
1. Input taxes on local purchases of goods and services without supporting documents.	P 35,184.15	P 24,294.55	P 59,478.70
2. Input taxes on local purchases of goods and services supported only by photocopies of the sup plier's invoices and/or OR's.	31,886.85	30,629.75	62,516.60

3. Input taxes on local purchases of goods and services with supporting documents other than invoices and/or OR's.	795,754.40	411,158.50	1,206,912.90
Total	P862,825.40	P466,082.80	P1,328,908.20

SGV and Company also concurred with the following disallowances made by the Department of Finance for the fourth quarter of 1993:

	Findings	Amount
1.	Purchase of goods and services from VAT-exempt entities	P 44,794.32
2.	Other exceptions	64,106.58
Total		P108,900.90

Finding no irregularity in the investigation procedures conducted by the petitioner through an independent CPA relative to its claim for tax credit, this Court adopts its factual findings and resolves to grant the petitioner a tax credit amounting to P13,449,368.29 computed as follows:

Total claim for tax credit		P23,558,690.05
Less: a) Tax Credit Certificate issued by respondent	P8,671,512.66	
b) Disallowances by SGV and Company	P1,328,908.20	
c) Disallowances by Department of Finance concurred by SGV and Company	108,900.90	10,109,321.76
Net Input VAT for tax credit		P13,449,368.29

WHEREFORE, in view of all the foregoing, this Court hereby orders respondent to issue a tax credit certificate in favor of the petitioner in the amount of P13,449,368.29 representing the balance of excess input taxes paid for the quarters ending September 30, 1993 and December 31, 1993.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals